

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)
vs.) CAUSE NO. 3:05-CR-35 RM
TIMOTHY CALHOUN (02))

OPINION AND ORDER

Timothy Calhoun plead guilty to possessing a firm arm while being an unlawful marijuana user in violation of U.S.C. § 922(g). At the June 20 change of plea hearing, at the Government's request, the court found there was not clear and convincing evidence that Mr. Calhoun was not likely to flee based upon his noncompliance with court ordered counseling sessions and drug screens. The Government called one witness, Lisa Wirick —Mr. Calhoun's Pretrial Supervision Officer—who testified that Mr. Calhoun had failed to attend counseling sessions with sufficient regularity stating that "he had not been in attendance since may 4th of 2005." (Tr. Change of Plea Hr'g p. 25). Ms. Wirick's testimony was based on information she had received from Addictions Recovery Center's monthly report. On July 1, 2005, Mr. Calhoun's counsel received a letter from Addiction Recovery Centers office manager Michele Schlabach, who clarified that "Tim attended four sessions, May 4, May 11, June 6, and June 13."

Mr. Calhoun has now filed his “Amended Motion to Reconsider Court’s Order of Detention,” wherein he contends that in light of this new evidence he is not at risk to appear at his sentencing hearing and that he would be a good

candidate for home detention. The court cannot agree with Mr. Calhoun's contention.

Because Mr. Calhoun has pleaded guilty and awaits sentencing, there is a presumption of detention which may be rebutted only by clear and convincing evidence that he is not likely to flee. 18 U.S.C. § 3143(a); U.S. v. Manso-Portes, 838 F.2d 889, 890 (7th Cir. 1988). Ms. Schlabach's letter shows a discrepancy in information Ms. Wirick related in her testimony, but it remains Mr. Calhoun was attending only one out of every three counseling sessions, indicating an indifferent attitude to the terms of his pretrial release order. Because the court cannot find by clear and convincing evidence that Mr. Calhoun is not likely to flee his motion is DENIED [docket no. 34].

SO ORDERED.

Dated: September 15, 2005

/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court